

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

SHELLY K. CARPENTER,

Civil No. 04-2617 (JRT/JSM)

Plaintiff,

v.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

JO ANNE B. BARNHART,
Commissioner of Social Security

Defendant.

Mark G. Schneider, MARK G. SCHNEIDER, PLLC, 815 Third Avenue South, Fargo, ND 58103 and Paul R. Oppegard, SMITH BAKKE OPPEGARD PORSBORG WOLF, Post Office Box 657, Moorhead, MN 56561-0657.

Lonnie F. Bryan, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, 600 United States Courthouse, 300 Fourth Street South, Minneapolis, MN 55415, for defendant.

Plaintiff Shelly Carpenter applied for Social Security disability benefits in 2001 alleging disability due to a variety of physical and mental impairments including sarcoidosis of the lungs, a range of gastrointestinal problems, degenerative disc disease, severe headaches, fibromyalgia, deep vein thrombosis in her legs, chronic knee pain, and depression. Carpenter's application initially was denied by an Administrative Law Judge ("ALJ"), and further review was denied by the Appeals Council. After her application was finally denied, Carpenter commenced this action for judicial review. Both parties moved for summary judgment.

In a report and recommendation dated August 3, 2005, United States Magistrate Judge Janie S. Mayeron recommended that the Court grant in part and deny in part plaintiff's motion for summary judgment, deny defendant's motion for summary judgment, and remand this case to the Administrative Law Judge for further proceedings. This matter is before the Court on defendant's objections to the Report and Recommendation. The Court has conducted a *de novo* review of defendant's objections pursuant to 28 U.S.C. § 636(b)(1)(C) and D. Minn. LR 72.1(c)(2). For the reasons set for the below, the Court adopts the Report and Recommendation of the Magistrate Judge.

ANALYSIS

The Magistrate Judge's Report and Recommendation provides a comprehensive recitation of the background of this case and correctly identifies the applicable standards of review. The Magistrate Judge thoroughly analyzed whether the ALJ's decision was supported by substantial evidence on the record, and identified at least two aspects in which the ALJ's findings were fatally deficient. Specifically, the Magistrate Judge pointed out that the ALJ (1) failed to adequately consider the full range of Carpenter's alleged physical impairments including, but not limited to, her degenerative disc disease; and (2) failed to supplement the medical records so that the ALJ *could* consider the full range of Carpenter's alleged ailments.

The government objects that these deficiencies do not support a finding that the ALJ's determination was not supported by substantial evidence because the ALJ is not required to rely on a medical opinion in making his residual functional capacity

assessment. However, the Magistrate Judge's recommendation does not rest on the lack of a *medical* opinion. Rather, the Report finds that the only evidence in the record supporting the ALJ's determination is a consultative report by a non-examining physician that cannot, alone, constitute substantial evidence. *See Nevland v. Apfel*, 204 F.3d 853, 858 (8th Cir. 2000). Furthermore, the Magistrate Judge notes, the report was made without the benefit of medical records addressing Carpenter's back problems. Finally, in addition to these deficiencies noted by the Magistrate Judge, this Court notes that the ALJ did not adequately explain his reasons for discounting the opinion of Carpenter's treating physician. *See Prosch v. Apfel*, 201 F.3d 1010, 1013 (8th Cir. 2000) (requiring ALJ to recite "good reasons" for the particular weight assigned to a treating physician's opinion). After careful review of the record, the Court finds that the ALJ's decision was not supported by substantial evidence, and that the case should be remanded to the Commissioner for further proceedings consistent with this opinion and the Report and Recommendation.

ORDER

Based on the foregoing, all the records, files, and proceedings herein, the Court **OVERRULES** defendant's objection [Docket No. 27] and **ADOPTS** the Magistrate Judge's Report and Recommendation [Docket No. 26]. Accordingly, **IT IS HEREBY ORDERED** that:

1. Plaintiff's motion for summary judgment [Docket No. 13] is **GRANTED** in part and **DENIED** in part;

2. Defendant's motion for summary judgment [Docket No. 20] is **DENIED**;
and

3. The case is remanded to the Administrative Law Judge for further
administrative proceedings consistent with this Opinion.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: September 13, 2005
at Minneapolis, Minnesota.

s/ John R. Tunheim
JOHN R. TUNHEIM
United States District Judge